

REMARKS

Claims 1, 7-20 are pending in the application. Applicant is amending claims 1 and 7-20 to place them in better form for examination.

. Claim Amendments

Applicant thanks the Examiner for his comments and believes that it has amended claims to place them in better form for examination; specifically claims 1 and 7-20. Applicant believes that it has amended the claims to overcome the Examiner's objections. No new matter has been added and no additional fees are believed to be due.

Amendments to the Specification

Applicant has amended the specification to include text from the claims as originally filed which are part of the original specification. As pointed to in the office action, Paragraph 20 does support detecting a decreasing change in the current (I) but Paragraph 20 also refers to Figure 8 which explicitly and inherently shows small or no fluctuations. Therefore, amendments to paragraph 20 are explicit and inherent in Figure 8. Applicant believes that the amendments are fully supported by the claims, specification, drawings, priority documents or are inherent. No new matter has been added and no additional fees are believed to be due.

Claim Rejections – 35 U.S.C. §112

The Examiner has rejected the claims as being indefinite. Applicant has amended this claim to place it in better condition for examination.

Applicant notes that claims 7, 12 and 17 and claims 8, 13, and 18 are fully supported by the application as filed.

Claims 9 and 14 have been amended to place them in better condition for examination.

Claims 10, 15, and 19 have been amended to place them in better condition for examination. Further, the Office Action states that it is unclear how “lowering the current fluctuations to a preset level can prevent foam.” The claims states that the “rpm” of the circulation pump are lowered to lower the current fluctuations. This objection is unclear.

Claims 11 and 16 are fully supported by the application as filed. Applicant notes that paragraph 18 and figures 6 and 6 fully support detecting a decreasing change of the current (I).

Claim 20 has been amended to place them in better condition for examination and is supported by the claim itself or is inherent (see paragraph 20 and figure 8).

Applicant kindly asks that the Examiner withdraw these objection.

Claim Rejections – 35 U.S.C. §102

The Examiner Failed To Show That Applicant’s Claims Are Anticipated

For a claim to be rejected under this statute, it must be anticipated by the prior art. Anticipation occurs when every element of the claimed invention is found in a single prior art reference.¹ In addition to including every element of the claimed invention, the prior art reference must also “be enabling and describe the applicant’s claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.”² In other words, for the prior art reference to anticipate the claimed invention, all of the elements in the claim must be found in a single piece of prior art “in exactly the same situation and united the same way to perform the identical function. . . .”³

¹ *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987); *see also, Electro Med. Sys. v. Cooper Life Sciences*, 34 F.3d 1048 (Fed. Cir. 1994) (stating, “[a]nticipation under 35 U.S.C. §102 (b) requires the presence in a single prior art disclosure of each and every element of a claimed invention. . . .”); *General Elec. Co. v. Hoechst Celanese Corp.*, 740 F.Supp. 305, 313 (Del. 1990) (stating that “[i]n order to anticipate a later claim, a single prior source must contain all of the essential limitations of the claim”).

² *In re Paulsen*, 30 F.3d 1475, 1479 (Fed. Cir. 1994).

³ *Sandisk Corp. v. Lexar Media, Inc.*, 91 F.Supp.2d 1327, 1336 (N.D. Cal. 2000). *See also, In re Arkeley*, 455 F.2d 586, 587 (P.App.Cir. 1972) (stating that “rejections under 35 U.S.C. §102 are proper only when the claimed subject matter *is* identically disclosed or described in the ‘prior art’”) (emphasis in original).

A. Applicant's Claims 1, 9-11, 14-16, 19, and 20 are not anticipated by US Pat. Publ. No. 2005/0005952 issued to Basark ("Basark").

1. Claim 1

Here, *Basark* does not anticipate Applicant's claim 1. Specifically, *Basark* does not disclose every element in exactly the same situation and united in the same way to perform the identical function of Applicant's claims. The Examiner asserts that *Basark* includes of the limitations in Applicant's claims 1, 9-11, 14-16, 19, and 20. Applicant respectfully disagrees with Examiner's comparison of Applicant's claim elements to the elements in *Basark*.

The Examiner states that *Basark* teaches a dishwasher with wash tub, sump, circulation pump with variable rpm, and discharge pump. *Office action pages 8*. However, there is no circulation pump with variable rpm for driving the circulation pump at different speeds. The office action states that the *Basark* pump may be turned on or off so it would have a variable rpm as it stops and starts, and additionally states that the pump motor speed can be measured, for example at paragraph 24, indicating it can vary in speed. Even assuming these statements are true for argument sake, there is nothing in *Basark* that discloses that the pump is driven at variable speeds merely that the pump may change speeds from on/off or that some external change may cause the speed to vary. Neither of these positions show that the pump in *Basark* can drive the at variable speeds (such as lowering the rpm to operate the pump at low speed as in the current invention). Further, Applicant has added the limitation that the circulation pump can change directions which is not found in *Basark*. As such, the office action has not shown that *Basark* discloses all of the elements of claim 1.

Further, *Basark* only teaches the use for controlling the amount of liquid added in successive fill sub-cycles. Paragraph [0015]. It does not teach the use of monitoring current for detection of operating problems such as dirt and clogging. Thus, *Basark* does not operate in exactly the same way to perform the identical function.

Applicant kindly asks that this objection be withdrawn.

Claim Rejections – 35 U.S.C. 103(a)

Applicant's Claims Are Not Rendered Obvious Under 35 U.S.C. §103 Over Any Of The Prior Art Patents

The Examiner has failed to establish a prima facie case of obviousness. When examining a patent application, the Examiner has the initial burden of factually supporting a prima facie conclusion of obviousness.⁴ Additionally, when rejecting claims under 35 U.S.C. §103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness.⁵ In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). Specifically, the Examiner must (1) determine the scope and content of the prior art; (2) determine the differences between the prior art and the claims at issue; and (3) determine the level of ordinary skill in the art.⁶ In addition to these factual determinations, the Examiner must also provide “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”⁷ Moreover, the analysis supporting obviousness should be made explicit and should “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements” in the manner claimed.⁸

Only if the Examiner makes a prima facie case of obviousness, does the burden shift to the Applicant for providing evidence of non-obviousness.⁹ Obviousness is then determined based on the evidence as a whole and the persuasiveness of the arguments.¹⁰ Here, the Applicants respectfully assert that the Examiner has failed to meet the evidentiary burden.

Additionally, the cited prior art differs from the Applicants' claims. Therefore, a person of ordinary skill in the art at the time of the invention would not have looked to the prior art cited by the Examiner to create Applicants' claims. As such, the Applicants respectfully request that the Examiner reconsider Applicants' claims.

⁴ See, *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

⁵ See, *In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988).

⁶ See, *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

⁷ See, *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

⁸ See, *KSR Int'l Co. v. Teleflex*, No. 04-1350, slip op. at 15 (U.S. 4-30-2007).

⁹ See, *In re Oetiker*, 977 F.2d at 1445.

Since , *Basark* does not teach claim 1 it cannot be combined with any dependent claims.

Claims 10, 15 And 19 Are Allowable Since *Sagou* (JP 2005-000511) Is Not Prior Art

In addition to other objections, the office action states that claims 10, 15 and 19 are not allowable as obvious in light of *Sagou* (JP 2005-000511) in combination with other prior art references. This is not true since *Sagou* is not prior art. The effective priority date of *Sagou* as a foreign reference is its publication date of January 6, 2005. However, the priority date of the present application is the filing date of it priority document, namely March 16, 2004. Thus, *Sagou* is not prior art for purposes of this application.

Further, the office action states that it is known in the art to have lower rotation of speed of a dishwasher upon the detection of foam, and the results of the modification would be predictable, namely an effective means of suppressing the foaming phenomena. *Instant office action pages 15 and 16.* However, this is untrue. Specifically, *Sagou* states in paragraph 22 (machine translation) that “the washing pump 5 can be weakened by the revolving speed of the pump motor 7 being lowered, and while the vigor of water jet is also reduced, the air introduced into the discharge tube 6 from the inlet pipe 17 **may also decrease** and a **foaming phenmenon may be suppressed**, and **may return to an after that usual state.**” Applicant notes that *Sagou* does not support the reasoning of office action since it only say that such factors **MAY** reduce foaming not that it necessarily happens.

¹⁰ *See, Id.*

Applicant kindly asks that the *Sagou* be withdrawn and claims 10, 15 and 19 be allowed.

Conclusion

Applicants believe they have addressed and responded to every point raised in the Examiner's present action. For the reasons stated above, Applicants respectfully request reconsideration of their application and allowance of the claims.

Respectfully submitted,

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